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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 337

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, NATIONAL LIFE INSURANCE COMPANY, PENN MUTUAL LIFE INSURANCE COMPANY, and PHOENIX MUTUAL LIFE INSURANCE COMPANY (original Plaintiffs); and AETNA LIFE INSURANCE COMPANY, THE PRUDENTIAL LIFE INSURANCE COMPANY OF AMERICA, THE UNION MUTUAL LIFE INSURANCE COMPANY (Plaintiffs Added by Stipulation),

Appellants,

v.

FRANK C. MOORE, Comptroller of the State of New York,

Appellee.

APPEAL FROM THE NEW YORK COURT OF APPEALS

Involving the Abandoned Property Law

PETITION FOR REHEARING

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Appellants respectfully request a rehearing on the question of what State has jurisdiction to escheat the proceeds of abandoned life insurance policies. We respectfully suggest that the Attorneys General of the States in which appellants are incorporated be invited or permitted to participate in a rehearing and reargument.

The Court's decision was delivered March 29, 1948. Three Justices dissented, and one Justice did not hear the oral argument but joined in the majority opinion.

We earnestly urge the following grounds:

(1) Confusion to the entire life insurance industry, to the States, and to the Courts below, will be created unnecessarily by the present decision.

(2) The nature of these new wholesale escheat statutes calls for a practical and definite rule of jurisdiction. To insist that it be fought out piecemeal would be a step backward by a Court which has taken such great strides forward in modernizing our federal procedure.

(3) No real obstacle exists to formulating a workable rule here, and it is urgently needed.

(4) The facts are not hypothetical on any material factor. It would add nothing to know the name of the policyholder, or the date when he moved from New York, or the name of the State where he died. The decisive factors would be the same.

(5) States' rights can be protected by inviting or permitting their Attorneys General to participate.

(6) Pennsylvania's statute (which was the first act on this subject) is invalidated to a large extent by the decision, it seems, and yet even this is not too clear. Similar problems may be involved in the application of the decision to the Connecticut statute. The Pennsylvania rule is the only practical rule, and is legally sound under the bank account decisions of this Court.

(7) With more than 40 State legislatures meeting in regular session shortly after January 1, 1949, each seeking new sources of revenue, a more adequate guidepost is needed from this Court on the question of jurisdiction. The bulk of these abandoned policies which have accumulated over the years will escheat in the first year of such legislation. Hence the urgency of a workable rule of jurisdiction before it is too late to unscramble the rights of all concerned.

(8) The unusual, if not unique, decision of this Court, refusing to pass upon vital parts of the statute which were clearly raised and passed upon in the State Court, and yet affirming the State Court's judgment, instead of reversing or modifying it in part, leaves the appellants exposed to double escheat (a very different thing from double taxation). In effect it deprives the appellants of their right to a decision by this Court on constitutional questions forced upon appellants by the language of the statute itself and determined by State Courts.

(9) The statute as construed by the New York Comptroller and by the New York Court of Appeals specifically applies even though there was a change of residence after a policy was issued and regardless of where the beneficiary resided at the maturity of the policy (R. 11-12, fol. 19; R. 14, fol. 23; R. 16-17, fol. 26; R. 19-20). It is conceded that New York will enforce the statute in that manner, unless prevented by this Court (R. 20, par. "28"). It is also conceded that every year thousands of policyholders change their residences from one State to another (R. 9-10, fol. 16). The statute itself specifically mentions and covers instances where the last known address of the policyholder is outside of New York State (Sec. 702(2), R. 25, fol. 38). Nevertheless this Court's present decision reserves the question of whether the act is constitutional in such instances, and thereby fails to pass upon this important part of the statute itself, although the Courts below have held this part constitutional.

(10) The Court apparently sustains New York's right to take the money if the policy was issued for delivery in New York upon the life of a then resident of New York, and if there was no later change of residence, and yet the Court says: "The problem of what another state than New York may do is not before us.

That question is not passed upon." (Mr. Justice Reed's opinion, p. 7, line 5). This statement may be seized upon by other States to escheat the same money on a different theory of jurisdiction.

We have here a new theory, the wholesale escheat of so-called abandoned policies. It affects an entire industry, and the jurisdictional rights of every State. Every year the proceeds of many policies must be turned over to some State. To keep this new type of legislation on the correct jurisdictional path is important. It deserves and needs the guidance of this Court.

The essential facts are very simple. They are not hypothetical on any material point. They are necessarily limited to the companies' records which show the address of the insured at the time that a policy was applied for; sometimes a later change of address; and sometimes the address of the beneficiary. No one knows whether these addresses were the residences (i.e., domiciles, if that is what the Court meant) of the policyholders (R. 9-10, 17, 44, 50). No one knows the residence of either at the time of maturity of the policies. If that were known there would be few, if any, abandoned policies. There is no practical way of determining the residence of these missing policyholders, either at the time that the policies were issued, or at any later date (R. 9-10, 44, 50).

The problem is a practical one and the rule of jurisdiction should be a practical one appropriate to the known facts. Having sustained mass escheats the Court should formulate a workable rule of jurisdiction. This can only be accomplished by eliminating the residence factor which can hardly ever be determined as a practical matter.

The rule applied to the escheat of bank accounts and has become part of our law. It works satisfactorily because it is based on a known factor, the location of the bank. It ignores the residence of the depositor, an unknown factor.

It is the only rule which can work where escheat is attempted on a wholesale basis.

Unless the Court's decision is modified the insurance companies are in a serious dilemma, through no fault of their own. The New York Court of Appeals has ruled that these policies must be paid to New York if the policy was issued for delivery in New York upon the life of a resident of New York. This Court affirms, except that it leaves open the validity of the law "in instances where the insured persons, after delivery, cease to be residents of New York or where the beneficiary is not a resident of New York at maturity of the policy" (Mr. Justice Reed's opinion at p. 8). The result is that the companies are compelled under the New York decision to pay to the State, and yet under the decision of this Court the companies may find that they are again liable if it develops that the insured changed his residence, or if the beneficiary resided elsewhere at the maturity of the policy,—matters which are impossible to determine.

The reason given for this ruling is that the "interests of other possible parties not represented here may be effected by our conclusions and no specific instances of those types appear in the record" (Mr. Justice Reed's opinion at p. 8). To this we respectfully point out that the interests of the missing policyholders or beneficiaries in these abandoned property cases can never be represented, and yet there was no difficulty in formulating a rule of jurisdiction in the bank account cases where none of the depositors or beneficiaries were represented. Nor would it be any easier to decide the case if the record showed that "John Doe" moved from New York after the policy was issued, or that the beneficiary resided elsewhere at the maturity of the policy. The record already shows that many such instances will come under this statute. How could it really enlighten the Court to have the name or date? As pointed out in the bank account cases there is

no prejudice to the insured or beneficiaries because the money is as safe in the hands of one State as another. The only other parties in interest are the various States. Their Attorney Generals could be invited to participate in a rehearing if the Court approves.

In the bank account cases the Court arrived at a practical rule of jurisdiction which seems to have worked satisfactorily throughout the nation. Undoubtedly all States would prefer a workable rule to a dilemma. An unworkable rule will involve the companies and the States in a multiplicity of needless litigation, costing the States and the life insurance companies large sums.

It is impossible to base a workable rule upon the residence factor. We respectfully suggest the very simple and practical rule which this Court has long applied to abandoned bank accounts, which is that the State in which the bank is located has power to escheat. The facts here are identical. Each is a debt. In each the creditor is missing. In each the account is deemed abandoned. In each the residence is unknown, and quite immaterial according to the decisions in *Anderson National Bank* v. *Luckett*, 321 U. S. 233, and *Security Bank* v. *California*, 263 U. S. 282.

In this case, as in the bank account cases, the only known factor is the location of the debtor (the bank or the insurance company). That is enough. Why complicate it with questions of residence which are impossible to determine? There was no hypothetical problem there, and there is none here. On the other hand, the residence approach will obviously lead the companies and the States into a maze of litigation and legislation because it is impossible in this type of wholesale escheat to determine residence of these missing persons.

The bank account cases have woven a jurisdictional pattern into the fabric of the law, and a good one. There is no real obstacle to continuing that pattern in the life insurance cases. It hurts no one and helps many. It leaves the money in the State where the policyholder himself sent it. It avoids the extravagant waste of time in preparing reports for 48 States instead of one report for one State. It respects the statutes of Pennsylvania and other States which have limited their legislation to policies issued by domestic companies, apparently following the bank account decisions, which they were quite justified in supposing were equally applicable to insurance accounts. In short, it deals with realities in a practical way that no State could seriously object to. Even the State of New York conceded upon the argument, if our recollection is correct, that it would lose nothing by such a rule, and we are reasonably sure that most States would much prefer such a workable rule.

Counsel for the appellants hereby certify that this petition is presented in good faith and not for delay.

Respectfully,

GANSON J. BALDWIN
BUIST MURFEE ANDERSON
JOHN F. HANDY
Counsel for Appellants

April 8, 1948.